

Virginia Department of Education - Division of Special Education and Student Services

Office of Dispute Resolution and Administrative Services

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<http://www.pen.k12.va.us/VDOE/dueproc/>

COMPLAINT RESOLUTION PROCEDURES

The Virginia Department of Education (VDOE) has established procedures for receiving and resolving complaints which allege a violation of Federal and State laws and regulations pertaining to the education of children with disabilities, in accordance with the Individuals with Disabilities Education Act-Part B and its implementing regulations, 34 Code of Federal Regulations §300.660, et. seq.; the Code of Virginia, §22.1-214, E. and the Regulations Governing Special Education Programs for Children with Disabilities in Virginia, effective March 27, 2002, 8 VAC 20-80-78.

The purpose of the State procedure is to provide a system required by law which will be responsive to individual citizens and agencies, meet the spirit and letter of the law, and provide for an opportunity for school divisions and complainants to mutually resolve differences. The VDOE maintains and operates a complaint system that provides for investigation of and issuance of findings regarding violations of the rights of parents, or children with disabilities. The Office of Dispute Resolution and Administrative Services is responsible for the investigation and resolution of all complaints.

I. FILING A COMPLAINT

- A. A complaint may be filed by any individual, organization, or an individual from another state. The complaint must:
 - 1. Be in writing.
 - 2. Be signed by the complaining party.
 - 3. Contain a statement that the local educational agency (LEA) has violated a requirement of federal and/or state law(s) and/or regulations that apply to special education.
 - 4. Include the facts on which the complaint is based.
 - 5. Address an action that occurred not more than one year prior to the date the complaint is received, (unless the VDOE determines that a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received by the VDOE).
 - 6. Contain all relevant documents and supporting information.
- B. All relevant documents must be forwarded to the Office of Dispute Resolution and Administrative Services, Virginia Department of Education, P. O. Box 2120, Richmond, VA 23218-2120, or faxed to the same office at (804) 786-8520.

II. INITIATION OF COMPLAINT and SUBMISSION OF LEA RESPONSE

- A. Within seven (7) business days of the receipt of the written signed complaint by the Office of Dispute Resolution and Administrative Services:
 - 1. The Office of Dispute Resolution and Administrative Services sends written notification of receipt of the complaint to both the complainant and the school division, with copies to the Division Superintendent and the Special Education Director of the LEA which is the subject of the complaint.
 - 2. The Office of Dispute Resolution and Administrative Services also provides the Division Superintendent and the Special Education Director a copy of the letter of complaint and offers technical assistance to resolve the complaint.
 - 3. A copy of these Complaint Resolution Procedures is also sent to the complainant.
- B. In the written notification, the Office of Dispute Resolution and Administrative Services identifies the relevant issues, and requests the LEA to respond in writing, in reference to the applicable laws and regulations.

1. The LEA's written response must be submitted within ten (10) business days of receipt of the letter of notification.
 2. A copy of the LEA's response, along with all submitted documentation, shall simultaneously be sent by the LEA to the complainant if the complaint was filed by the parent or parents of the child, the student who has reached the age of majority, or their attorney.
 3. If the complaint was filed by another individual, the LEA shall simultaneously send the response and submitted documentation to that individual if a release signed by the parent or parents or student who has reached the age of majority has been provided.
- C. The notification letter sent to the complainant and the LEA shall provide the complainant and the LEA with an opportunity to submit additional information about the allegations in the complaint, either orally or in writing. The Office of Dispute Resolution and Administrative Services establishes a timeline in the notification letter for submission of any additional information so as not to delay completing the investigation within the 60-day regulatory timeline.
- D. If the school division fails to submit its written response within the first ten (10) business days following their receipt of the notice of complaint, the Office of Dispute Resolution and Administrative Services shall send a second notice to the LEA advising that failure to respond within seven (7) business days of the date of such notice may result in appropriate sanctions.

III. EARLY RESOLUTION and MEDIATION

- A. With the initial notification, both the complainant and the school division are advised that the LEA has ten (10) business days after the school division receives the notice of the complaint to resolve the complaint on the local level, or to submit the LEA's written response to the Office of Dispute Resolution and Administrative Services.
1. An extension of this ten (10) business day timeline shall be granted if necessary for the parties to resolve the complaint on the local level. Both parties shall be notified of the extension.
 2. Any extension, when granted, shall not affect the 60 calendar day timeline for resolution of the complaint by VDOE.
 3. Also, an extension of the early resolution period shall not affect the obligation of the LEA to submit its written response within ten (10) business days of receipt of the letter of notification.
- B. Early resolution may include use of the Statewide Special Education Mediation system, available at no cost to the parties through the VDOE. Parties may call (804) 786-0711 for more information regarding mediation, or visit VDOE's website at <http://www.pen.k12.va.us/VDOE/Instruction/ssems.html>
- C. If the LEA is able to resolve the complaint then it must provide documentation of the resolution. The resolution statement must be signed by both the complainant and a representative of the LEA, must state the details of the resolution, and must indicate that the parent and the LEA have agreed to the resolution and that all issues raised in the complaint have been satisfactorily resolved. Upon receipt of such documentation of resolution, the Office of Dispute Resolution and Administrative Services will close its investigation file.
- D. If the LEA is unable to resolve the complaint, the school division must provide the Office of Dispute Resolution and Administrative Services with a written response to the alleged violation(s) of federal and state law and regulations, and must provide the documentation requested by the Office of Dispute Resolution and Administrative Services within the ten (10) business day timeline noted above.

IV. COMPLAINT INVESTIGATION

- A. The Office of Dispute Resolution and Administrative Services shall conduct an investigation of the complaint, which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary.

- B. If the complaint is also the subject of a due process hearing or if it contains multiple issues of which one or more are part of that due process hearing, the Office of Dispute Resolution and Administrative Services shall:
 - 1. Set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing; and
 - 2. Resolve any issue in the complaint that is not a part of the due process hearing involving the same parties. (Note: Issues that are separate and distinct from the due process hearing will be investigated and resolved within the mandated timeline).
- C. A time limit of 60 calendar days shall be allowed after the written complaint is received to carry out the investigation and to resolve the complaint. An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the VDOE of the exceptional circumstances and the extended time limit.
- D. Upon completion of the investigation, the Office of Dispute Resolution and Administrative Services will determine whether the LEA complied with the applicable special education laws and regulations. Determination of compliance or noncompliance on each issue shall be based upon the facts and applicable law, regulations, or standards. The Office of Dispute Resolution and Administrative Services shall notify the parties in writing of the findings and the bases for such findings.
- E. The VDOE shall ensure that the final decision of the Office of Dispute Resolution and Administrative Services is effectively implemented, if needed, through:
 - 1. Technical assistance activities;
 - 2. Negotiations; and
 - 3. Corrective actions to achieve compliance.
- F. Depending on their nature, issues may be referred by the Office of Dispute Resolution and Administrative Services to legal counsel for VDOE; other VDOE staff; or the U. S. Department of Education for review.

V. LETTER OF FINDINGS

- A. The Office of Dispute Resolution and Administrative Services sends a Letter of Findings jointly to the individual who filed the complaint and the Division Superintendent of the LEA that is the subject of the complaint. A copy of the letter is also sent to the Special Education Director of the LEA.
- B. Should the complaint be filed by anyone other than the parent, the student who has reached the age of majority, and/or their legal counsel, the complainant is notified that the parent or student who has reached the age of majority will be informed of the Office of Dispute Resolution and Administrative Services' receipt of the complaint and provided a copy of the complaint, pertinent correspondence, and these Complaint Resolution Procedures. At the conclusion of the Office of Dispute Resolution and Administrative Services' review, findings are issued only to the parent, or student who has reached the age of majority, and the LEA, unless the complainant has obtained and filed the necessary consent for release of the information. In that instance, the complainant receives a letter of assurance that any identified areas of noncompliance have been corrected.
- C. The Letter of Findings summarizes the complaint issues; pertinent facts; the assessment of facts based on federal and state laws and regulations and applicable case decisions/rulings/opinions; and conclusions.
 - 1. If the LEA is found in compliance, the complaint file is closed.
 - 2. If the LEA is found in noncompliance, the Letter of Findings shall specify the requested corrective action(s) to be taken. The complaint file remains open until corrective action is obtained and approved by the Office of Dispute Resolution and Administrative Services.

VI. CORRECTIVE ACTIONS

- A. Should the Letter of Findings determine that the school division was not in compliance with the applicable laws and regulations, the Office of Dispute Resolution and Administrative Services shall specify the steps that must be taken by the LEA to bring it into compliance.
- B. The LEA will be given 15 business days from the date of notice of noncompliance to respond and initiate corrective action(s).
- C. When the LEA develops a plan of action to correct the violations (a "Corrective Action Plan"), such plan shall include timelines to correct violations not to exceed 30 business days unless circumstances warrant otherwise. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the VDOE.
- D. In resolving a complaint in which a failure to provide appropriate services is found, VDOE will address:
 - 1. The remediation of the denial of those services, including, as appropriate, compensatory services, the awarding of monetary reimbursement, or other corrective action appropriate to the needs of the child; and
 - 2. Appropriate future provision of services for all children with disabilities.
- E. If the LEA does not initiate the necessary corrective action within the time required in the notification, the matter may be referred to the Superintendent of Public Instruction and then to the Board of Education for a hearing. A decision may be made that State and Federal funds for the education of children with disabilities shall not be made available to that LEA until there is compliance with the applicable law and/or regulations.
- F. The Office of Dispute Resolution and Administrative Services reviews the LEA's corrective action plan. Once the corrective action plan is approved, the Office of Dispute Resolution and Administrative Services notifies the Division Superintendent and the complainant that the complaint file is closed.
- G. VDOE is responsible for ensuring that the LEA has implemented the Corrective Action Plan (CAP). The Office of Special Education and Student Services is responsible for tracking and ensuring CAP implementation, which will include periodic follow-up activities, either by letter or on-site visit if necessary, in cooperation with the VDOE Technical Assistance Specialist assigned to the LEA.
- H. VDOE shall report findings of noncompliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action.
- I. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Virginia Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then the superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA until there is full compliance with the applicable law or regulation.
- J. Under the Freedom of Information Act, and subject to the confidentiality requirements of the Family Educational Rights and Privacy Act and Individuals with Disabilities Education Act - Part B, VDOE may be required to release information relative to the complaint, upon completion of the Letter of Findings and closure of the complaint file.

VII. APPEAL PROCEDURE:

Parties to the complaint procedures shall have the right to appeal the final decision to the Virginia Department of Education in accordance with procedures established by the Virginia Board of Education.

- A. Appeals must be filed with VDOE within 30 calendar days of the date the Office of Dispute Resolution and Administrative Services issues its findings.

- B. A copy of the Complaint Appeal Procedures is included with each Letter of Finding.
- C. These procedures are available by contacting the Office of Dispute Resolution and Administrative Services, or by visiting the VDOE website at <http://www.pen.k12.va.us/VDOE/Instruction/comappeal.pdf>.

VIII. DISSEMINATION OF THE COMPLAINT RESOLUTION PROCEDURES

The Office of Dispute Resolution and Administrative Services widely disseminates these complaint resolution procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.